

Members

Sen. Joseph Zakas, Chairperson
Sen. Connie Lawson
Sen. Rose Antich
Rep. John Aguilera
Rep. Robert Kuzman
Rep. Ralph Foley
James Martin
Vincent Heiny
Terry Harris
Janet Ellis
Robert Christopher
Cynthia Boll
Diane Bender
MaryEllen Kiley Bishop
John Chappell



PROBATE CODE STUDY COMMISSION

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MEETING MINUTES¹

Meeting Date: October 10, 2001
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St., Room 233
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Sen. Joseph Zakas, Chairperson; Sen. Rose Antich; Rep. John Aguilera; Rep. Ralph Foley; James Martin; Vincent Heiny; Terry Harris; Janet Ellis; Robert Christopher; Diane Bender; MaryEllen Kiley Bishop.

Members Absent: Sen. Connie Lawson; Rep. Robert Kuzman; Cynthia Boll; John Chappell.

Senator Zakas called the meeting to order.

Sen. Zakas introduced Senator Vi Simpson whose legislative efforts had brought the issue of the Uniform Trust Code before the Commission. Before addressing the UTC, Senator Zakas announced his intention to move the Commission through some of the preliminary drafts scheduled for discussion.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Sen. Zakas asked counsel to review the technical corrections related to SEA 190-2001. Attorney Ross Hooten explained the proposed drafting changes. Rep. Foley then moved that the Commission endorse the proposed changes. Mr. Martin seconded the motion and the motion was approved with a unanimous voice vote.

Mr. Martin then presented Preliminary Draft 3210 concerning trust construction. Following Mr. Martin's description of the draft's provisions, the Commission discussed the nature of the changes and whether specific language that would exempt the statutes from application if a trust instrument contains contrary provisions was necessary.

Before the Commission could settle the issue, Sen. Zakas noted the arrival of Mr. John McCabe, the legislative director of the National Conference of Commissioners on Uniform State Laws. Sen. Zakas then asked Sen. Simpson to introduce Mr. McCabe.

Mr. McCabe placed the proposed UTC within the context of trends in trust law and the potential for changes in the rules that apply to national banks. He described the UTC as a proactive response to the changing environment. He then described the features of the UTC comparing and contrasting the provisions to current Indiana law.

Following his prepared remarks, Mr. McCabe answered the questions of the Commission members. He reported that the UTC is being introduced in legislatures around the country for the first time and that it not yet been adopted by any state.

He indicated that to date the draft had not generated any real "hot button" issues, but added that the issue of the removal of trustees by beneficiaries had the potential to be a hot topic.

Sen. Zakas then asked the audience for comments. Mr. Jeff Kolb appeared on the behalf of the Indiana State Bar Association and prefaced his remarks by stating his personal preference for the UTC. He then raised a number of questions about topics not addressed by the UTC such as Medicaid eligibility of trust beneficiaries, the capacity of a trustee, and the statute of uses with regard to land trusts. Mr. Kolb also commented on the structure of the Indiana draft of the UTC suggesting that the number of chapters used chopped up the text too much.

Ms. Cindy Wolfer also appeared on behalf of the ISBA. She also praised the UTC saying that it has a "clarifying agent" that Indiana law lacks. She also reviewed some of the areas in which the UTC differs from Indiana law.

Ms. Kerry Spradlin of the Indiana Bankers' Association stated that the association could neither support or oppose the UTC in the upcoming session of the General Assembly. Ms. Spradlin reported that the association was reviewing the draft and communicating with their counterparts in other states, but would not be able to outline a position on the UTC until the early summer of 2002. Ms. Spradlin's remarks concluded the discussion of the UTC.

The Commission then turned its attention to the Uniform Principal and Income Act (SB 48-2001). Sen. Zakas asked Mr. McCabe to also address the provisions of the UPIA.

Mr. McCabe described the history of the Conference's efforts in this area of the law. He described the UPIA as a compilation of "cookbook rules" used to enable trust administrators to allocate trust assets as either principal or income.

He then noted a concern of the banking community. Bankers question whether the

guidelines within the UPIA can be reconciled with a trustee's obligations under the Uniform Prudent Investor Act which requires trustees to invest trust assets in a manner that enhances the total return on the investment. The fear is that prudent investing to maximize total return may turn out to be more beneficial to income beneficiaries than to the remainder beneficiaries. Mr. McCabe described Section 104 of the UPIA has an attempt to reach a balance between the obligations of the UPIA and the Uniform Prudent Investor Act by providing a discretionary power to reallocate trust assets if the balance between income beneficiaries and remainder beneficiaries becomes skewed. Mr. McCabe reported that the provision has disturbed some. He then described California's response to the provision and the Conference's response to the controversy (Section 105).

Mr. Kolb submitted a number of commentaries relating to the issues raised by Mr. McCabe and indicated his personal support of the UPIA.

Mr. Kolb described a few changes recommended by the Probate Review Committee of the Probate, Trust, and Real Property Section of the ISBA concerning charitable remainder trusts and pensions. Mr. Kolb also stated the committee's preference for a delayed effective date that would allow practitioners to absorb the UPIA.

The Commission discussed the New York and Delaware response to the issue where each state has changed its law to allow a trust to be converted to a "unitrust" which is not considered to be divided into principal and income.

Ms. Spradlin reported that the IBA had created a task force to study the UPIA and that the task force was favoring adoption of the act with particular attention to Section 104 and the amendments recommended by the review committee.

Following the discussion of the UPIA, the Commission returned to its discussion of PD 3210. In the end, the members agreed that counsel should look at the Probate Code's rules of will construction for guidance on the issue of whether an explicit statement that the terms of a trust instrument prevail over the statutory rules is necessary in PD 3210.

Ms. Spradlin then presented PD 3212 which would expand the application of a procedure allowing a beneficiary to petition the court for removal of a corporate trustee to trusts executed before July 1, 1996. Ms. Spradlin said that the IBA was still uncomfortable with the change as the association views the current law as a necessary means of preserving the settlor's intent with regard to trusts prepared before July 1, 1996.

Mr. Kolb reported that the review committee has been in favor of removing the 1996 date from the statute.

The Commission took no action on PD 3212.

Mr. Harris moved that the Commission endorse PD 3213 concerning the establishment of paternity for inheritance purposes. Mr. Heiny seconded the motion. The motion passed with an unanimous voice vote.

The Commission then discussed PD 3214. Mr. Harris suggested that the PD be amended to allow an attorney to voluntarily submit a will in the attorney's possession to a court upon the death of the testator. Rep. Foley moved that the Commission amend the PD as suggested and endorse the PD as amended. Mr. Martin seconded the motion. After some discussion of the need to change the law at all, the Commission voted 9-1 to endorse the amended PD.

Mr. Kolb presented PD 3215 which would alter the rule against perpetuities to allow the creation of a perpetual trust. Mr. Kolb described the need for the change in the law as a competitive issue as Illinois, Wisconsin, and Michigan now permit perpetual trusts.

The Commission took no action on PD 3215.

Sen. Zakas adjourned the meeting.